



# OPEN COMPETITIVE BIDDING

GUIDANCE NOTE ON PROCUREMENT

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JUNE 2018

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## ABOUT THIS PUBLICATION

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In April 2017, the Asian Development Bank (ADB) approved its new procurement framework, the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time); and the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time). These replace the former Guidelines on the Use of Consultants (2013, as amended from time to time) and Procurement Guidelines (2015, as amended from time to time). The procurement policy and the procurement regulations address the procurement activities of project executing agencies and implementing agencies on projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds. ADB designed the 2017 procurement policy to deliver significant benefits and flexibility throughout the project procurement cycle, as well as to improve project delivery through a renewed focus on the concepts of quality, value for money (VFM), and fitness for purpose.

This note is part of a series of guidance notes published by ADB in 2018 to accompany the 2017 procurement policy and the procurement regulations. Each note discusses a topical issue for borrowers (including grant recipients), bidders, and civil society under the new framework (see list below). The guidance notes cross-reference each other frequently and should be read in conjunction. All references to “guidance notes” pertain to these notes. The notes may be updated, replaced, or withdrawn from time to time.



### List of Guidance Notes for the 2017 ADB Procurement Policy and the Procurement Regulations

- |  |  |
|--|--|
| 1. Value for Money                                       | 14. High-Level Technology                                |
| 2. Procurement Risk Framework                            | 15. Quality  |
| 3. Strategic Procurement Planning                        | 16. Bidding-Related Complaints                           |
| 4. Procurement Review                                    | 17. Noncompliance in Procurement                         |
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| 6. Open Competitive Bidding                              | 19. State-Owned Enterprises                              |
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| 8. Abnormally Low Bids                                   | 21. Framework Agreements for Consulting Services         |
| 9. Domestic Preference                                   | 22. Public-Private Partnerships                          |
| 10. Prequalification                                     | 23. Contract Management                                  |
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| 12. Consulting Services Administered by ADB Borrowers    |  |
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ADB procurement reforms intend to ensure VFM by improving flexibility, quality, and efficiency throughout the procurement cycle (see illustration below and the *Guidance Note on Value for Money*). VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility. The two key principles of transparency and fairness weave across all elements of the structure.



**Time**

Time is an important element of VFM. When a project is delivered promptly or when a process is completed rapidly, greater value is created for all stakeholders. For example, a road project completed early provides economic benefit, security, or other value to the community it serves. It increases the return on investment to the executing agency and accelerates the project and payment cycle to the successful bidder. Likewise, a project delivered late loses significant value.

When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame or (ii) accelerates delivery of the development project.



## Objective

This guidance note is intended to assist readers by elaborating on and explaining ADB's 2017 procurement policy and procurement regulations for borrowers (including grant recipients).

This note identifies additional information for the reader to consider when applying ADB's procurement policy and procurement regulations to their circumstances.



## Living Document

This guidance note is intended to be a living document and will be revised as required.

Be sure to check the ADB Business Center website for the latest version and updates, <https://www.adb.org/business/main>.



## The Reader

In many circumstances, readers are expected to use this guidance note in a manner unique to their needs. For consistency throughout the suite of guidance notes, the following assumption is made about the reader:

The reader is a professional involved in activities financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.



## FAQs

Frequently asked questions, clarifications, examples, additional information, links to training, and other useful resources will be made available on the ADB website.

Be sure to check the ADB Business Center website for more information, <https://www.adb.org/business/main>.



## Legal and Order of Priority

This guidance note explains and elaborates on the provisions of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) applicable to executing (and implementing) agencies under sovereign (including subsovereign) projects financed in whole or in part by an investment loan from ADB (i.e., excluding ADB results- or policy-based loans), ADB-financed grant (excluding ADB-administered technical assistance and staff consultancies), or by ADB-administered funds.

In the event of any discrepancy between this guidance note and the procurement regulations, the latter will prevail. The financing agreement governs the legal relationships between the borrower and ADB. The rights and obligations between the borrower and the provider of goods, works, or services are governed by the specific procurement document issued by the borrower and by the contract signed between the borrower and the provider, and not by this guidance note.



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# ABBREVIATIONS

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ADB	—	Asian Development Bank
AFS	—	audited financial statements
IFB	—	invitation for bids
OCB	—	open competitive bidding
SBD	—	standard bidding document
VFM	—	value for money

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## EXECUTIVE SUMMARY

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Open competitive bidding (OCB) is ADB's preferred procurement method. OCB consolidates the competitive procurement of goods, works, and services under a single procurement method. It facilitates the use of flexible, principles-based procurement arrangements that are responsive to actual procurement risks and supply market conditions and achieve value for money outcomes. This guidance note advises borrowers (including grant recipients) on best practices for implementing OCB under projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

Effective use of the OCB method may

### **Increase Efficiency and Reduce Procurement Time**

- Due to the greater flexibility offered by OCB, bidding documents will be more appropriate to the contract being procured, enabling faster processing of procurement activities and more efficient contract implementation.
- OCB takes more account of supply market conditions to ensure effective competition and to minimize risk of nonresponsive bids and rebidding.

### **Reduce Risk**

- OCB arrangements will take account of and mitigate procurement and supply market risks identified through a comprehensive analysis.

### **Deliver Value for Money**

- Properly administered and open equally to national and international bidders, OCB will likely result in value for money in most cases.

### **Improve Fitness for Purpose**

- OCB arrangements will appropriately reflect the strategic needs and circumstances of the contract to be procured.
- The arrangements can be customized in case a standardized approach cannot effectively and efficiently meet project outcomes and development objectives.



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# I. Introduction

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1.1 This guidance note aims to assist users in procuring contracts using open competitive bidding (OCB), which is the preferred procurement method of the Asian Development Bank (ADB) due to the importance of open competition across ADB operations. OCB consolidates the competitive procurement of goods, works, and services (both nonconsulting and consulting services) under a single procurement method. This method facilitates open competition among all eligible bidders, regardless of whether procurement contracts are advertised internationally or nationally, or whether the procedures are based on the Procurement Regulations for ADB Borrowers; Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time), the national system, or the rules of another development partner under the mechanism of mutual reliance.<sup>1</sup>

1.2 The arrangements for OCB are based on procurement and supply market risk assessments. Its defining feature is effective and appropriate advertising that provides as many qualified bidders as possible equal opportunity to bid for contracts. The activities relating to OCB commence at the project planning stage of the ADB procurement cycle and continue through to contract award, to help ensure a successful procurement outcome and achieve optimal value for money (VFM)<sup>2</sup> (see Figure).

1.3 The procedures and documents used to procure a particular contract through OCB will not be limited by prescribed thresholds, methods, or bidding documents (Box 1). In general, implementation arrangements for OCB will be derived from a sophisticated planning process that takes into account procurement and market risk assessments,<sup>3</sup> quality criteria, fitness for

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## **Box 1** **Open Competitive Bidding Arrangements Are Determined by Good Planning**

The decision on whether and how to apply OCB, including whether to advertise nationally or internationally, is driven by the strategic procurement planning process. It does not depend on preconceived approaches or thresholds, but on the context of the project and the supply market.

Source: Asian Development Bank.

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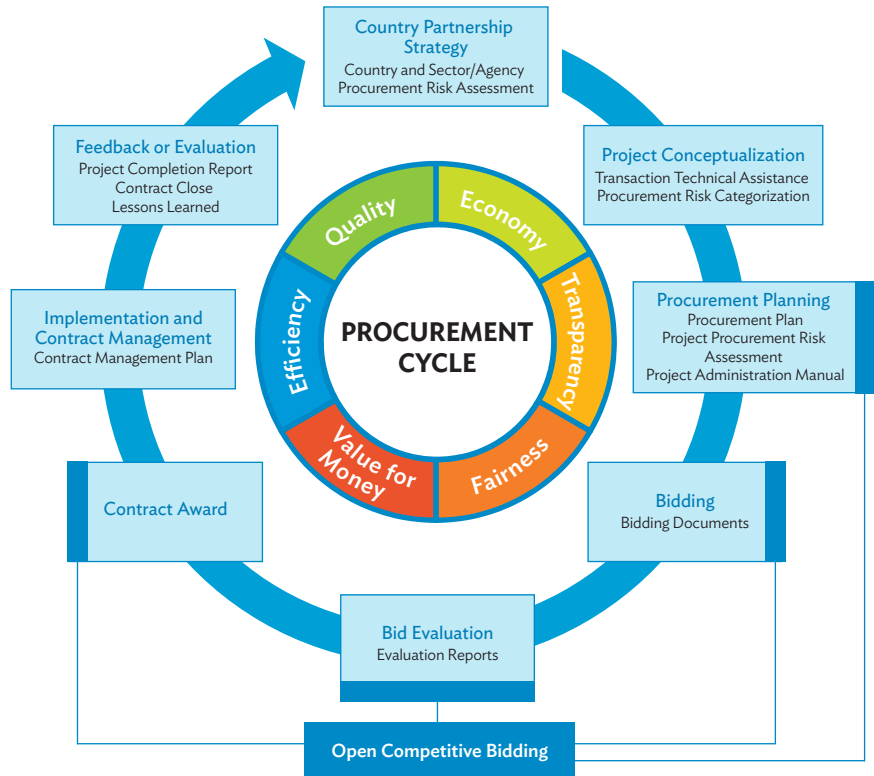
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<sup>1</sup> Mutual reliance is an agreement between a cofinancier and ADB to rely on each other's procurement principles and procedures. Depending on the circumstances, ADB may accept the use of alternative procurement arrangements.

<sup>2</sup> ADB defines VFM as the principle that enables borrowers to obtain optimal benefits through effective, efficient, and economic use of resources by applying, as appropriate, the core procurement principles and related considerations. These may include life cycle costs and socioeconomic and environmental development objectives of the borrower. Price alone may not sufficiently represent VFM. For further details, refer to the *Guidance Note on Value for Money*.

<sup>3</sup> For further details, refer to the *Guidance Note on Procurement Risk Framework*.

Figure: Open Competitive Bidding in the ADB Procurement Cycle



Source: Asian Development Bank.

purpose, and VFM, consistent with the core procurement principles of the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).<sup>4</sup>

1.4 Under this principles-based approach, OCB will be flexibly planned and implemented to mitigate risks effectively and achieve successful procurement and development outcomes (Box 2). OCB will, therefore, improve ADB’s responsiveness to changing or emerging trends, such as the needs of borrowers, best practices in procurement, contracting models and forms, technologies, modes of stakeholder engagement, etc. Bidding documents<sup>5</sup> may be designed accordingly

<sup>4</sup> When the planning process indicates that OCB is not appropriate, other methods of procurement may be used as defined in the procurement regulations in Section 2—Procurement Methods and Other Arrangements.

<sup>5</sup> In this guidance note, references to “bidding document” include requests for proposals used in consulting services, where appropriate to the context.

**Box 2****Open Competitive Bidding Is More Flexible than ADB's Previous Methods**

OCB is more than just a renaming of the international competitive bidding and national competitive bidding methods under the Procurement Guidelines (2015, as amended from time to time). OCB also encompasses competitive recruitment methods for consulting services<sup>a</sup> and removes conceptual boundaries (for example, the understanding that merit point scoring should not be used in the procurement of goods or civil works) that previously limited the flexibility needed to achieve successful procurement and development outcomes.

<sup>a</sup> Quality- and cost-based selection, quality-based selection, consultants' qualifications selection, fixed budget selection, and least-cost selection.

Source: Asian Development Bank.

and ADB's standard bidding documents (SBDs) may be revised from time to time, with new SBDs added to address evolving strategic needs.

1.5 When appropriately designed and implemented, OCB mitigates procurement and market risks, and achieves VFM and fit-for-purpose outcomes, including shaping the market to meet the borrower's strategic needs. It generally includes the following six stages: (i) notification and advertisement, (ii) prequalification or shortlisting (when appropriate),<sup>6</sup> (iii) preparation and issuance of the bidding documents, (iv) bid submission and bid opening, (v) bid evaluation, and (vi) contract award.<sup>7</sup>

1.6 The key steps to developing and undertaking an OCB procurement are as follows:

- (i) Determine the type and size of the contract, based on the circumstances and the various elements of goods, works, and services required under the project, in accordance with the project procurement plan. The *Guidance Note on Strategic Procurement Planning* has further details on procurement planning and contract packaging.
- (ii) Identify and develop the technical requirements, specifications, or terms of reference, and define the quality and performance levels to be achieved (section II of this guidance note).
- (iii) Develop appropriate evaluation and qualification criteria, depending on the quality and cost factors to be applied (sections III and IV).
- (iv) Determine the bidding procedures, such as use of two-stage or two-envelope bidding. The *Guidance Note on Strategic Procurement Planning* provides further details on the available bidding procedures and advice on when to use them.
- (v) Prepare the bidding documents (section V).

<sup>6</sup> For further information on prequalification, refer to the *Guidance Note on Prequalification*.

<sup>7</sup> Refer to the *Guidance Note on Consulting Services Administered by ADB Borrowers* for specific information on procedures for the procurement of consulting contracts using OCB.

- (vi) Publish the procurement notice, issue the bidding documents, receive bids, respond to clarifications and issue amendments (if any), and undertake bid opening procedures (section VI).
- (vii) Evaluate the bids received and undertake the contract award procedures, including debriefing (section VII).
- (viii) Manage the contract. Further details on the contract management process can be found in the *Guidance Note on Contract Management*.

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## II. Defining Technical Requirements and Quality and Performance Levels

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2.1 Specifications or terms of reference for OCB goods, works, and services contracts should adhere to the following principles:<sup>8</sup>

- (i) The specifications should
  - (a) define the technical and quality requirements of the contract;
  - (b) be formulated in terms of performance or functional requirements, where possible, and define the minimum performance requirements and any warranty and maintenance requirements;
  - (c) promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works, and/or services under procurement; and
  - (d) define the nature and scope of the contract that will be required to satisfy the needs, quality, and standards to be met.
- (ii) As much as possible, the specified equipment, materials, or techniques shall comply with internationally-accepted standards and technical requirements, such as those issued by the International Standards Organization. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or techniques meeting other, substantially equivalent standards will also be accepted.
- (iii) When appropriate, the technical specifications should define any tests, standards, and methods that will be employed to assess the conformity of equipment as delivered, or the works or services provided.
- (iv) Specifications shall be based on relevant characteristics and/or performance requirements and must avoid any references to brand names, catalog numbers, or similar classifications. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” must be added after such reference.
- (v) Offers for goods that have similar characteristics and that provide performance at least substantially equivalent to those specified shall be accepted.

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<sup>8</sup> In the case of admeasurement works contracts, in addition to the employer’s requirements, these principles also apply to the bill of quantities.



- (vi) Specifications should be prepared on the basis of, and be consistent with, the form of contract to be used. The respective responsibilities of the employer and contractor should be consistently described in and between the specification and the contract. The form of contract should not be an afterthought, to avoid risks of incompatibility between the specification and the contract, or the need to customize contract conditions to fit the specification.
- (vii) Sufficient information to enable bidders and evaluators to determine if a bidder's previous contract(s) will meet any qualification requirement for experience in similar contracts should be included.
- (viii) Wherever possible, the range of sizes or values for specific components should be prepared to fit in the overall performance standards and meet the requirements or purpose of those goods, like computers, vehicles, etc.

2.2 Further details on developing technical requirements for OCB are in the *Guidance Notes on (i) Quality, (ii) Value for Money, (iii) Consulting Services Administered by ADB Borrowers, and (iv) Nonconsulting Services Administered by ADB Borrowers*.

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## III. Developing Qualification Criteria

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3.1 The purpose of qualification criteria for goods, works, and nonconsulting service contracts is to ensure that the contract is awarded only to the bidder that has the professional, financial, and technical capacity to successfully perform it. The qualification requirements should be limited to those necessary to establish that a bidder has such capacity.

3.2 The standard text of qualification criteria should be used, unamended, from ADB's user's guides to its SBDs (where available), except to insert contract-specific information following the guidance in the relevant user's guide.<sup>9</sup>

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<sup>9</sup> Section V of this guidance note has links to the ADB user's guides to its SBDs.

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## IV. Selecting Evaluation Criteria

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### A. General Principles

4.1 The evaluation criteria must be carefully chosen to allow the right balance of price and quality to be assessed, and ensure that VFM will be achieved under the resulting contract. Factors to consider include the type, nature, and value of the procurement; market conditions; complexity; risk; and objective of what is being procured; as well as socioeconomic or environmental objectives, fitness for purpose, and the bidder's record of achieving the desired results based on experience and performance history.<sup>10</sup> The evaluation criteria must be clearly specified in the bidding documents and describe all factors that will be considered, and the methodology by which they will be quantified or evaluated.

4.2 In cases when quality standards of the technical requirements can be established and measured easily by referring to technical specifications or well-established industry standards, applying evaluation criteria that consider life cycle costs and the cost to the borrower of nonmaterial commercial and technical deviations will help to achieve VFM. Life cycle costs include costs of operation and maintenance, licensing, additional features, consumables, disposal, etc. This will then facilitate the calculation of an evaluated bid price for each bidder. The contract will be awarded to the bidder offering the lowest evaluated cost for goods, works, and services substantially meeting those technical requirements. This will be the case for standard off-the-shelf goods and equipment, standard works, and standard nonconsulting services.

4.3 For certain contracts, however, VFM is more likely to be achieved by applying evaluation methods that allow for an assessment of the balance between cost and quality according to the needs of the borrower as well as the project's intended development objectives. In such cases, the use of nonprice criteria (e.g., point scoring) may be suitable. Such cases may include

- (i) where quality needs to be measured by comparison among bidders, based on an assessment of qualifications, experience, and/or performance;
- (ii) complex solutions consisting of a combination of goods, works, and/or services; or

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<sup>10</sup> The *Guidance Note on Consulting Services Administered by ADB Borrowers* has further details on evaluation criteria for OCB consulting assignments.

- (iii) infrastructure, equipment, or services involving proven or high-level technology that improves the quality of the goods, works, or services provided.

## B. Excessive Criteria and Requirements

4.4 Evaluation criteria (including bidding requirements affecting the awarding of the contract to a bidder), which are intended to mitigate risks of supplier or contractor nonperformance (rather than addressing technical or commercial nonconformities), should not be excessive. For example, excessive bidding or evaluation requirements include

- (i) borrower staff visiting the bidders' manufacturing or reference sites to assess a bidder's capacity;
- (ii) bidders being requested to provide samples of goods to assess compliance with the technical requirements; or
- (iii) bidders being requested to provide original copies of documents, e.g., original signed contract document as evidence of a previous similar contract.

This reflects that the contract signed with the winning bidder will itself have built-in performance risk mitigations, e.g., contractual provisions that address contractor performance issues, including liquidated or delay damages, performance guarantee, advance payment to the contractor (supported by an advance payment guarantee held by the employer), etc.

4.5 If there is a compelling need for any such requirements, they can be requested or undertaken after the winning bidder has been awarded the contract, before or at the time of contract signing. The nonfulfillment of any such requirement will not affect the awarding of the contract or the contract price. Contractual provisions are sufficient to address any issues that may become apparent after the contract has been awarded.

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## V. Preparing Bidding Documents

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5.1 The use of OCB is supported by a suite of SBDs to promote consistency and legal certainty across procurement processes. The specific SBD to be used for a procurement contract will depend on the (i) nature, complexity, and value of the goods, works, and/or services required; (ii) desired bidding procedures (e.g., single-stage or two-stage bidding with one or two envelopes); and (iii) any application of alternative procurement arrangements (i.e., procurement rules of the lead cofinancier or accredited agency of the borrower).

5.2 The bidding document for a particular contract will be prepared by the borrower (through its project executing or implementing agency) and provided to prospective bidders who purchase it, or to applicants or firms that have been prequalified or shortlisted. Borrowers should refer to the ADB user's guide relevant to the SBD that will be used for the procurement, if ADB's SBDs are being used (Box 3).

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### Box 3

#### ADB's User's Guides to Its Standard Bidding Documents

User's guides on different ADB standard bidding documents are available for use for prequalification and for the procurement of goods, works, small works, and plant, among others, through the following links on the ADB website:

- ADB. 2018. *User's Guide to Prequalification of Bidders*. Manila.  
<https://www.adb.org/documents/prequalification-bidders-users-guide>.
- ADB. 2018. *User's Guide to Procurement of Goods*. Manila.  
<https://www.adb.org/documents/users-guide-procurement-goods>.
- ADB. 2018. *User's Guide to Procurement of Works*. Manila.  
<https://www.adb.org/documents/users-guide-procurement-works>.
- ADB. 2018. *User's Guide to Procurement of Works—Small Contracts*. Manila.  
<https://www.adb.org/documents/users-guide-procurement-works-small-contracts>.
- ADB. 2018. *User's Guide to Procurement of Plant—Design, Supply, and Installation*. Manila.  
<https://www.adb.org/documents/users-guide-procurement-plant-design-supply-and-install>.

Source: Asian Development Bank.

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## A. Requirements for Bidding Documents

5.3 Specific requirements for the bidding documents include the details summarized in Table 1 and the following:<sup>11</sup>

- (i) The bidding document and procedure to be used for a particular contract is indicated in the project procurement plan.
- (ii) Bidding documents must be clearly worded to permit and encourage open competition.
- (iii) The bidding document will normally be prepared based on an SBD issued by ADB (where available). Other SBDs may be used where an alternative procurement arrangement is applied or where another development partner or accredited agency has an SBD that is suitable for a highly specialized contract. Borrowers may use their local SBDs or those of other development partners, provided that such are consistent with ADB's 2017 procurement regulations.
- (iv) Local language bidding documents with provisions requiring (a) bids to be submitted in the local language, (b) bid prices and payment currency limited to local currency, and/or (c) bid and performance security (if used) restricted to local banks or in forms different from those allowed by ADB for international advertising, may be used for those contracts procured using national advertising, provided they are authorized to be used by local procurement laws, rules, and regulations deemed acceptable as indicated in the procurement plan.
- (v) Customized bidding documents may be used where an SBD will not, without the customizations, satisfy the core procurement principles, subject to ADB's review and no-objection.

## B. Content of Bidding Documents

5.4 Bidding documents define the procedures for bidding and the award of contract, and the rights and obligations of the borrower and the bidders throughout that process. While the content of each bidding document will depend on the type, value, and complexity of the contract, bidding documents will include common elements as described in Table 2.

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<sup>11</sup> The table excludes consulting services, for which requirements are described in the *Guidance Note on Consulting Services Administered by ADB Borrowers* and in ADB's standard request for proposals document.

**Table 1: General Use of Standard Bidding Documents under Open Competitive Bidding**

	Nationally Advertised OCB	Internationally Advertised OCB
<b>Type of SBD</b>	<ul style="list-style-type: none"> <li>• ADB's SBDs</li> <li>• Other development partners' SBDs</li> <li>• SBDs of an accredited agency of the borrower</li> <li>• Customized bidding documents</li> </ul>	
<b>Language of SBD</b>	National language and/or English	English
<b>Recommended period for preparation of bids</b>	4 weeks	6 weeks
<b>Application of domestic preference</b>	Yes	Yes <sup>a</sup>

ADB = Asian Development Bank, OCB = open competitive bidding, SBD = standard bidding document.

<sup>a</sup> Where the borrower's country is eligible for domestic preference as stated in the procurement plan. The *Guidance Note on Domestic Preference* has further details.

Source: Asian Development Bank.

**Table 2: Content of Bidding Documents**

Section	Content	Best Practice for ADB's SBDs
Instructions to Bidders	The requirements and procedures to be followed by the borrower and bidders in the bidding and contract award process	This section cannot be amended
Bid Data Sheet	Provisions that are specific to each procurement and supplement the information in the general Instructions to Bidders	This section can only be amended as indicated
Evaluation and Qualification Criteria	The criteria that will be applied to determine the successful bid, and the qualifications of the bidder to perform the contract where the bidding was not preceded by a prequalification process and postqualification is applied	<p>The qualification requirements should be limited to those necessary to establish that a bidder has such capacity.</p> <p>The evaluation criteria must be carefully chosen to allow the right balance of price and quality to be assessed, and ensure that VFM will be achieved under the resulting contract. The evaluation criteria must be clearly specified in the</p>

*continued on next page*

Table 2 *continued*

Section	Content	Best Practice for ADB's SBDs
		bidding documents and describe all factors that will be considered, and the methodology by which they will be quantified or evaluated.
Bidding Forms	Forms that are to be completed by the bidder and submitted as part of its bid	This section can only be amended as indicated
Eligible Countries	List of eligible countries	This section can only be amended as indicated
Technical Requirements	Statement of the requirements either in the form of technical specifications or terms of reference (including, where appropriate, drawings or plans and other information) which accurately describe the goods, works, or services to be procured, and the personnel and/or equipment requirements	To ensure that the best quality procurement outcome is achieved, clearly describe the contract requirements—goods to be supplied, works to be done, the services to be delivered—the schedule for goods delivery or works completion, and the location of the works and installation
General Conditions of Contract	General clauses that govern the contract, which will differ depending on the contract type  For example, large works contracts are based on the Conditions of Contract for Construction, Multilateral Development Bank Harmonized Edition, prepared by the Fédération Internationale des Ingénieurs-Conseil ("FIDIC 2010 MDB version")	This section cannot be amended
Particular/Special Conditions of Contract	Provisions that are specific to each contract and that modify or supplement the general conditions of contract	This section can only be amended as indicated
Contract Forms	Forms that will form part of the contract  Some of these, e.g., forms for performance security and advance payment security, when required, would only be completed by the successful bidder after contract award	This section cannot be amended

ADB = Asian Development Bank, SBD = standard bidding document, VFM = value for money.

Source: Asian Development Bank.



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## VI. Advertising and Bidding

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6.1 The defining step in OCB is maximizing participation through the timely notification and advertisement of adequate bid information. Procurement opportunities for projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds, are advertised on the ADB website, in the “Business Opportunities” and “Projects and Tenders” sections. Consulting contracts are specifically advertised in the Consultant Management System. OCB opportunities are, depending on the use of international or national advertising, also advertised in national newspapers, gazettes, borrower country websites, or through other electronic means. Electronic procurement tools acceptable to ADB are recommended whenever available. The *Guidance Note on E-Procurement* has further details on the use of electronic procurement systems by borrowers.

### A. Notification and Advertisement

6.2 In addition to the publication of an advance procurement notice and procurement plan on the ADB website, advertising for specific contracts (including invitations for prequalification) will be carried out internationally or nationally, depending on the nature, size, and value of the procurement contract, as well as on the prevailing market conditions for the goods, works, and/or services in question (Box 4). The project procurement plan shall include the mode of advertisement (international or national advertising) for each contract package. The following procedures will apply even if the contract is being procured through advance contracting or retroactive financing.

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#### **Box 4** **Complex Procurements May Need Wider Advertising**

For large or specialized contracts, advertisement in well-known technical magazines, trade publications, or newspapers of wide international circulation may also be required to ensure effective competition capable of achieving the core procurement principles.

Source: Asian Development Bank.

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#### **1. International Advertisement**

6.3 Procurement contracts using international advertising shall be published

- (i) on the ADB website;<sup>12</sup>
- (ii) on a freely and publicly accessible website in English; and

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<sup>12</sup> ADB. [www.adb.org](http://www.adb.org).

- (iii) in a newspaper of national circulation (at least in one English language newspaper, if available) or website in the borrower's country.

## 2. National Advertisement

6.4 Where the supply market assessment indicates a contract is not amenable to international competition, the advertisement may be published in the national press, gazette, or on a free and publicly accessible website. The advertisement may also be published on the ADB website at the option of the borrower, except for advertisements for consulting services, which must be advertised on the ADB website through the Consultant Management System, regardless of whether they use international or national advertising.

## B. Requirements and Procedures

6.5 An invitation for bids (IFB) must provide information to potential bidders regarding the borrower (or prospective borrower, in cases of procurement action taken in advance of ADB's loan or grant approval); amount and purpose of the loan or grant; scope of procurement under OCB; and the name, telephone number, e-mail address, and address of the borrower's executing or implementing agency responsible for procurement, and/or the website where the bidding documents can be obtained (Box 5).<sup>13</sup>

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### Box 5 Contents of an Invitation for Bids

- Borrower information: agency name, address, e-mail, contact numbers
- Purpose and amount of loan or grant
- Scope of contract
- Website where the bidding documents can be obtained

Source: Asian Development Bank.

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6.6 To further assist potential bidders in deciding whether to purchase or obtain the bidding documents, the IFB may also include information regarding the key qualification criteria, key criteria for bid evaluation (including the application of any domestic preference in bid evaluation), and relevant contractual requirements and conditions.

6.7 Regardless of the review method for the contract, a copy of the IFB must be submitted by the borrower to ADB for review and publication on the ADB website. The *Guidance Note on Procurement Review* has further details on ADB's prior and post review (sampling) arrangements for borrowers' procurement actions.

6.8 The period from advertisement—i.e., the period from the date of publication of the IFB or the date of availability of the bidding documents,

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<sup>13</sup> This section addresses requirements and procedures for advertising goods, works, and nonconsulting services procurements through OCB. The *Guidance Note on Consulting Services Administered by ADB Borrowers* has specific information on the advertising of OCB consulting service contracts.

whichever is later—to the date of bid submission must allow bidders sufficient time to prepare and submit quality bids. This depends on the nature and complexity of the contract. Generally, 6 weeks for internationally advertised contracts and 4 weeks for nationally advertised contracts will be sufficient. However, a shorter or longer period may be appropriate depending on the circumstances of the project, for example: the magnitude and complexity of the contract, the need for specialized technical inputs into bid preparation, the responsiveness of the supply market, and/or the use of electronic procurement.

## **C. Clarifications of and Amendments to the Bidding Documents**

6.9 Requests for clarification submitted by potential bidders and the borrower's responses shall be made in writing or, where possible, through a secure electronic procurement system.

6.10 The borrower will respond to any request for clarification received no later than the specified period prior to the deadline for bid submission. The borrower will forward copies of the request and its response, without disclosing who submitted the request, to all those that have purchased or obtained the bidding documents from the borrower.

6.11 The borrower may amend the bidding documents by issuing addenda and, where necessary, extend the deadline for bid submission. The borrower must ensure that all prospective bidders that purchased or obtained the bidding documents from the borrower are made aware of the amendment(s).

6.12 For complex works, supply, or services contracts, a pre-bid conference supported by a site visit may be arranged so that potential bidders can meet with the borrower's representatives to seek clarifications (in person or online). Minutes of the conference must be provided to all those that have purchased or obtained the bidding documents and, in cases of prior review, a copy shall be sent to ADB.

## **D. Bid Opening**

6.13 The bid opening will be conducted as described in the bidding documents and depend on whether the bidding procedure is based on the submission of one or two envelopes in one or two stages. Experienced borrower staff or consultants should lead the bid opening process, as mistakes are usually irreversible and may lead to complaints. Appendix 1 of this guidance note summarizes bid opening procedures. Further details are described in the ADB 2017 procurement regulations, in Appendix 3, paras. 62–68.

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## VII. Bid Evaluation, Contract Award, and Debriefing

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7.1 The award of contract results from a bid evaluation process that determines the winning bidder by strictly following the criteria and methodology described in the bidding documents (Box 6). Appendixes 2 and 3 describe typical bid evaluation procedures and common issues encountered during bid evaluation.

7.2 The borrower will make its own arrangements on who undertakes the evaluation and how it is done, e.g., by a designated evaluation committee or other arrangements, and by the committee in joint session or by individual evaluations deliberated and put to a committee vote. There must be procedural guarantees (i) against conflicts of interest and (ii) for maintaining the confidentiality of information. ADB strongly recommends that the evaluation (and contract award) be completed within the initial period of bid validity, to avoid problems such as bidders not agreeing to extend the validity of their bids. The borrower must prepare a detailed report on the evaluation and comparison of bids. The report will specify the basis for recommending that the contract be awarded to a particular bidder. ADB's Guide on Bid Evaluation (2018) provides further details on the bid evaluation process.<sup>14</sup>

7.3 If an extension of bid validity becomes necessary and is justified, the borrower must request such an extension from all bidders in writing before the expiration date. Bidders may not be requested or permitted to change the price or other conditions of their bid, but will have the right to refuse the extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security.

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### Box 6

#### Abnormally Low Bids

To maintain the quality of bids, evaluation will also concern the identification of any abnormally low bids. This refers to bids whose bid prices appear so unreasonably low that it raises concerns with the borrower on the bidder's ability to perform the contract successfully. The *Guidance Note on Abnormally Low Bids* provides further details on the identification and assessment of bids that appear to be abnormally low.

Source: Asian Development Bank.

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<sup>14</sup> ADB. 2018. *Guide on Bid Evaluation*. Manila. <https://www.adb.org/documents/guide-bid-evaluation>.

## A. Role of Evaluators

7.4 Good procurement outcomes rely on the borrower's evaluators having appropriate skills, and then exercising those skills and their professional judgment to evaluate bids against the bidding document. If the borrower does not have sufficient technical or financial skills, consultant support should be arranged.

## B. Role of Bidders

7.5 Under the ADB 2017 procurement regulations, "it is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid to assure submission of a fully responsive and compliant bid that includes all the supporting documents requested in the bidding documents."<sup>15</sup> This means that a bidder cannot rely on the borrower to identify and allow it to correct its errors by requesting clarification of ambiguities or missing documents during the evaluation process. While there is scope for the borrower to request clarifications or missing documents without affecting the substance of the bid or transparency of the bidding process, the borrower is under no obligation to do so.

## C. Postqualification Procedure

7.6 In cases where prequalification was not carried out, the borrower must determine if the recommended bidder has the capability and resources to effectively carry out the goods, works, or nonconsulting services contract offered in the bid. The bidding document contains criteria to be satisfied. The borrower should especially scrutinize the successful bidder's eligibility, including checking the ADB sanctions list (for all bidders) and its pending litigation, rather than relying on disclosures of such information in the submitted bidding forms. If the bidder does not fulfill those criteria, the bid must be rejected and the borrower will need to make a similar determination for the next-ranked bidder. In a single-stage, two-envelope bidding process, all bidders will be subjected to postqualification.

7.7 The contract is awarded to the bidder who meets the appropriate standards of capability and whose bid has been determined to be substantially responsive to the bidding documents and to offer either (i) the lowest evaluated cost or (ii) the best combination of quality and price, as appropriate and according to contract type, based on the criteria identified in the bidding documents, including life cycle costs, wherever applicable.

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<sup>15</sup> ADB. 2017. *Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services*. Manila. Appendix 9, para. 13.

## D. Domestic Preference

7.8 Where ADB has accepted provisions that promote or encourage the development of domestic industry through domestic preference schemes, these will be applied at the evaluation stage. This may be done only in accordance with a scheme that has been identified in the procurement plan.

## E. Notification Requirements

7.9 Once the borrower has selected the successful bidder for an internationally or nationally advertised contract, it will undertake the following tasks (i) within 2 weeks of that decision; (ii) after expiry of the standstill period, where such period applies; or, (iii) upon receipt of ADB's confirmation of satisfactory resolution of the complaint, if a complaint has been filed within the standstill period:

- (i) transmit a notice of award to the successful bidder; and
- (ii) publish the results, identifying the bid and lot or package numbers as applicable, in an English language newspaper or widely known and freely accessible website.

7.10 The publication of the results should contain the following information:

- (i) the name of each bidder;
- (ii) the bid prices as read out at bid opening;
- (iii) the name and evaluated prices or appropriate scores of each bid that was evaluated;
- (iv) the name of bidders whose bids were rejected and the reasons for their rejection; and
- (v) the name of the winning bidder, and the price it offered or score it achieved, as well as the duration and summary scope of the contract awarded.

7.11 When funding projects, ADB may accept the application of national standstill provisions or those of another development partner (Box 7). Where standstill provisions apply, the borrower shall, before issuing any notice of award of contract, send to each unsuccessful bidder a written notification of (i) the borrower's intention to award a contract to the successful bidder at the end of the designated standstill period; and (ii) the details described in Appendix 3, para. 87, of the 2017 procurement

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### Box 7 Standstill Periods

A standstill period suspends the procurement procedure for a specified time (usually 10 working days) between the point at which the intention to award the contract is formulated and when the contract is actually awarded. It is generally used to provide unsuccessful bidders with a period within which they can challenge the proposed award to allow for the timely filing and resolution of any complaints.

Source: Asian Development Bank.

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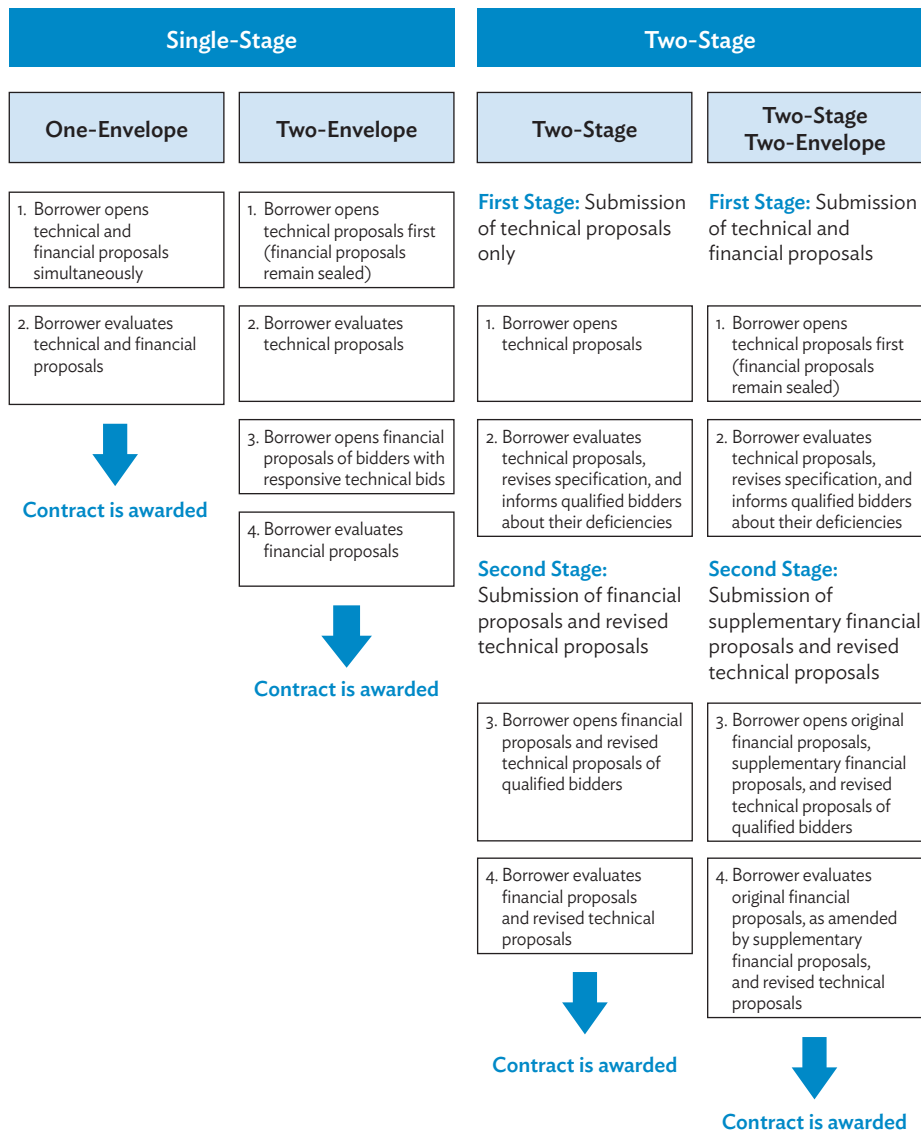
regulations. The *Guidance Note on Standstill Period* provides further details on the use of standstill periods in ADB operations.

## **F. Debriefing**

7.12 Where standstill provisions do not apply, the borrower will specify in the notification of contract award that any bidder who wishes to ascertain the grounds on which its bid was not selected should request an explanation from the borrower. The borrower shall promptly, in writing and/or in a debriefing meeting, provide an explanation of why the bid was not selected.

7.13 Where a standstill provision applies, debriefing shall take place within that period. The borrower's failure to provide a debriefing within the standstill period will normally (depending on the national provisions) have the effect of extending the end of the standstill period until a debriefing is conducted. If the bidder is not satisfied with the explanation from the borrower, the bidder may write directly to ADB. The *Guidance Note on Bidding-Related Complaints* provides further details on the complaints process.

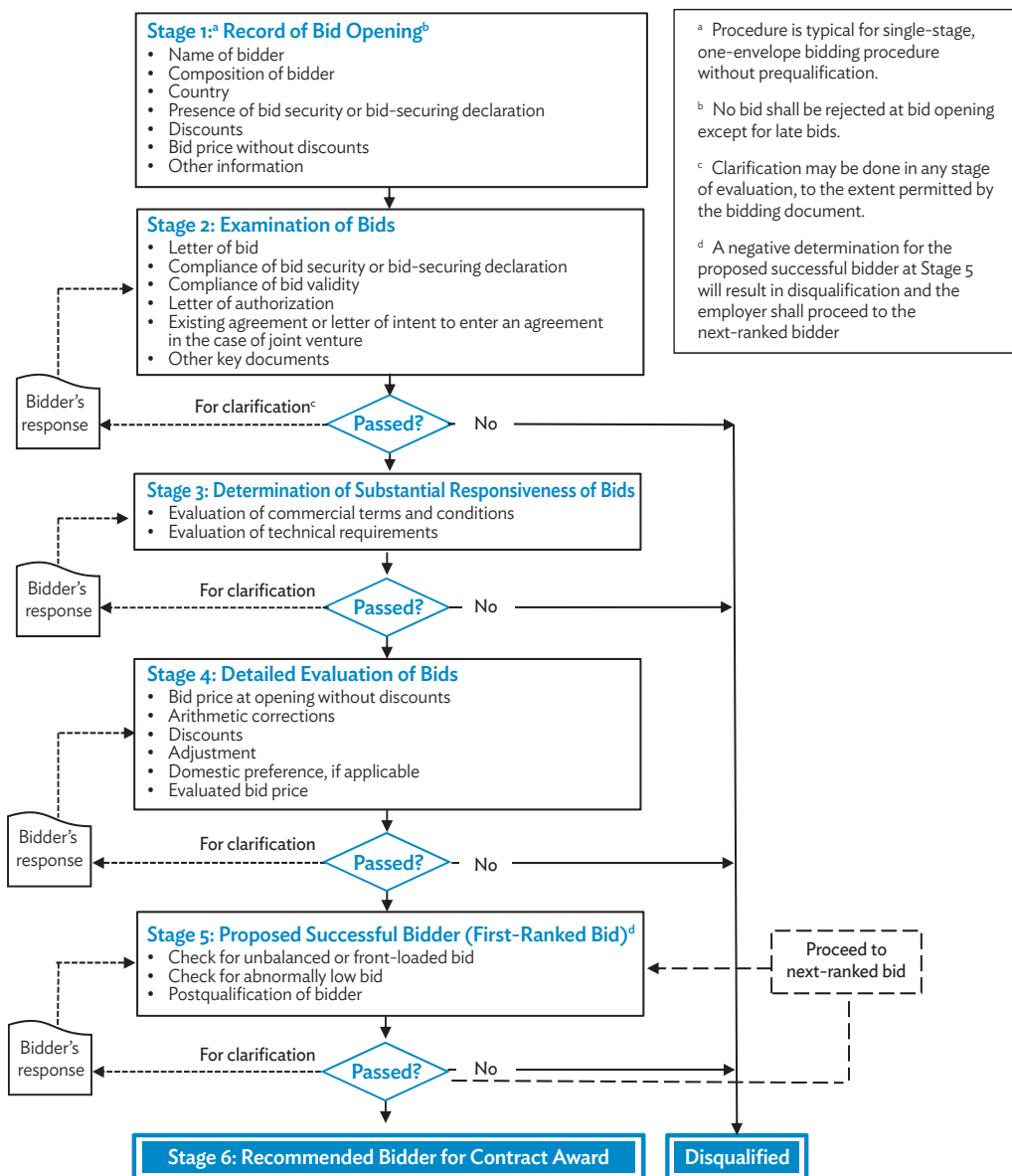
# Appendix 1: Flowchart of Bid Opening Procedures



Source: Asian Development Bank.



# Appendix 2: Typical Bid Evaluation Procedures



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## Appendix 3: Common Issues in Bid Evaluation

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### A. Evaluation of Bids Against Financial Qualification Criteria

A3.1 When evaluating qualification criteria relating to the financial capacity of a bidder (i.e., historical financial performance, average annual [construction] turnover, and financial resources), the borrower should be alert to signs that the bidder does not actually have sufficient capacity even though it seems to technically meet the criteria. For example:

- (i) audited financial statements (AFS) may mention legal disputes, even though the bidder states elsewhere in its bid that it has no pending litigation or arbitration, or mention ongoing contracts or projects that are not included in the bidder's current contractual commitments;
- (ii) a bidder may submit consolidated AFS for a group of companies, of which the bidder is one of those companies, such that the bidder's financial capacity will be overstated if consolidated figures are used by the borrower to evaluate the bid;
- (iii) a bidder may insert figures in its bidding forms that are inconsistent with figures in its AFS; and
- (iv) a bidder may use figures from its AFS for total turnover rather than just its construction turnover in calculating its annual construction turnover.

A3.2 The financial information provided by the bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass or fail decision on the financial position of the bidder should be given on this basis. Any abnormal features that may lead to financial problems should alert the borrower to seek expert professional advice for further review and interpretation.

## **B. Evaluation of Bids Against the “Contracts of Similar Size and Nature” Criterion**

### **1. Experience as a Main Contractor versus as a Subcontractor**

A3.3 Bidders may be understood as having different roles in their previous contracts, for example:

- (i) as the “general contractor,”
- (ii) as the “main contractor,” or
- (iii) as a “subcontractor.”

A3.4 These roles involve different degrees of project management and actual construction of the works, and may vary from one contract to the next. For this reason, it is necessary to look beyond a broad classification of a bidder’s role as a general or main contractor, or subcontractor and, instead, to focus on the substance of the bidder’s participation in a previous contract, in assessing its similarity to the contract being procured. The assessment should consider the bidder’s explanation of the similarity of its previous contract, in the relevant bidding form.

A3.5 Therefore, it is possible that, in the same bidding process, two bidders will offer the same previous contract to support their qualification for the “Contracts of Similar Size and Nature” criterion. One bidder may have performed the role of the main contractor and the other bidder may have been the subcontractor that constructed the actual works. The bidders may also claim both a percentage of the contract that exceeds 50% each and/or exceeds 100% of the contract in total. In principle, this is acceptable: the bidders have different, but overlapping roles, each of which may demonstrate that the bidder has sufficient capacity to implement the contract to be procured.

### **2. The Meaning of “Substantially Completed”**

A3.6 Evaluators should exercise their professional judgment, taking into account the nature and complexity of a bidder’s uncompleted previous contract, in assessing if it has been “substantially completed.” The assessment will largely depend on the nature or type of contract. For example, substantial completion of works of a repetitive or contiguous nature, such as the construction of a road, will be different from substantial completion of a turnkey contract for the construction of a facility, such as a water treatment plant.

A3.7 Use of an arbitrary percentage of physical progress or of the value of the contract that has been completed or disbursed can lead to poor procurement outcomes. For example, a bidder may meet the arbitrary requirement, but not have actual technical capacity, potentially leading to the bidder being awarded the contract, but not being able to successfully implement it. Alternatively, a bidder

may have derived adequate technical capacity from its uncompleted contract, but not be able to meet the arbitrary requirement, thereby leading to the bidder's rejection and a weakening of competition.

### **3. Evidence of Bidder's Past Contracts**

A3.8 Bidders may be required to provide evidence of their experience, including successful past performance. In addition, evaluators may conduct their own due diligence, for example, from the employer of a bidder's previous contract. When evaluators have obtained information from a third party that does not support or favor the bidder, the information needs to be formally introduced into the evaluation through a request for clarification to the bidder, to give the bidder the opportunity to respond to the adverse information.

A3.9 If the evaluators are concerned that supporting documents provided by a bidder are not genuine, the bidder may be requested to arrange reasonable attestation or certification to prove their authenticity. A bid cannot be rejected due to failure of a bidder to provide an original version of a document, e.g., a signed contract. If the borrower has a compelling need to see an original version of any document supplied by the winning bidder, it can be requested after the winning bidder has been awarded the contract, e.g., before or at the time of contract signing.

# Open Competitive Bidding

## *Guidance Note on Procurement*

With open competition a key principle in ADB operations, open competitive bidding is ADB's preferred procurement method. It consolidates the competitive procurement of goods, works, and services under a single procurement method. This method facilitates open competition among all eligible bidders, regardless of whether procurement contracts are advertised internationally or nationally. Its defining feature is effective and appropriate advertising to provide as many qualified bidders as possible equal opportunity to bid for contracts. This guidance note advises borrowers on best practices in implementing this method for projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

## About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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